

CAROL LAM'S RESPONSES TO QUESTIONS FROM SUBCOMMITTEE
CHAIR LINDA SANCHEZ:

1. Why should United States Attorneys be able to exercise some degree of independent judgment with respect to particular prosecutions and prosecutorial priorities?

As I indicated in my opening statement, each of the United States Attorneys who was asked to resign in December was a long-time resident of his or her district, and many of us had been prosecutors in our districts for years. We knew our communities, our offices, and our courts better than those who resided in Washington D.C. Additionally, differences in prosecutorial discretion among judicial districts reflects the diversity of our nation in terms of geography, counties, population, and other demographics. A "one size fits all" approach to prosecution priorities is a naïve and simplistic view of our country's crime problems.

2. When a highly respected United States Attorney is abruptly and without explanation removed, what impact does that have on other United States Attorneys and Assistant United States Attorneys in her office?

The result is predictable. United States Attorneys must have credibility, and they must never be afraid that their good-faith prosecution decisions will imperil their jobs. Unexpected removal without explanation damages the delicate balance that has been reached over many years, whereby U.S. Attorneys, barring misconduct, were afforded job security until the end of the President's term. It was that job security that permitted U.S. Attorneys the freedom to say what they thought and do what they believed was right. Because that balance has now been upset, a new atmosphere of second-guessing has descended on the U.S. Attorney community. The public and the press are second-guessing the difficult decisions that all U.S. Attorneys must make. This, of course, creates a chilling effect on the entire U.S. Attorney community.

3. Are you aware of any efforts to politicize the Justice Department with respect to its personnel decisions? If so, please explain.

I do not have direct evidence of the politicization of the Justice Department's personnel decisions.

4. Do you know if any representatives of any target of your office's investigations or prosecutions complained to either main Justice or the White House?

I assume this question refers to contacts outside the normal and accepted course of targets requesting a hearing or review by the Department of Justice; I am not aware of any such occurrences.

5. During your tenure, were you ever contacted by the Administration, Members of Congress, or Congressional staff about any of your office's investigations or prosecutions?

During my 4-1/2 years as United States Attorney, I received occasional inquiries about my office's work from Congressional staffers or Congressmen. As required by DOJ policy, I referred all such inquiries to the Department of Justice.

6. With respect to the Justice Department's decision to terminate you, Mr. Moschella at the March 6, 2007 hearing before the Subcommittee on Commercial and Administrative Law of the House Committee on the Judiciary ("hearing") explained that "there were two basic issues" concerning your office's pursuit of violent crime and illegal immigration cases.

- (a) With regard to the former, he stated, "[Q]uite frankly, her gun prosecution numbers are at the bottom of the list. She only beat out Guam and the Virgin Islands in that area."

Mr. Moschella's use of the phrase "She only beat out Guam and the Virgin Islands" reflects the unfortunate bean-counting approach to effective gun prosecution strategy that the Department came to employ.

According to the Project Safe Neighborhoods ("PSN") website, "Project Safe Neighborhoods (PSN) is a nationwide commitment to reduce gun crime in America. The effectiveness of PSN is based on the ability of local, state, and federal agencies to cooperate in a unified offensive led by the U.S. Attorney (USA) in each of the 94 federal judicial districts across the United States. Through collaboration with federal, state, and local law enforcement, each USA will implement the five core elements of Project Safe Neighborhoods—partnerships, strategic planning, training, outreach, and accountability—in a manner that is contoured to fit the specific gun crime problems in that district. The goal is to create safer neighborhoods by reducing gun violence and sustaining that reduction."

My office led, and continues to lead, partnerships with state and local law enforcement and community groups to educate the public about gun crimes and to further efforts to improve firearms prosecutions. However, our survey of gun prosecutions in the Southern District of California led to the inescapable conclusion that the District Attorney's Office was doing a very good job prosecuting gun offenses, using the myriad of effective gun laws available under California state law. The San Diego Police Chief and San Diego Sheriff informed me personally that they were greatly satisfied with the job the District Attorney was doing prosecuting gun crimes. We designed and implemented a protocol whereby gun cases would be prosecuted federally if a substantially higher sentence would be available, but relatively few cases were referred to my office under the protocol.

In 2004, I explained to then-Deputy Attorney General James Comey that we would continue to pursue any firearms cases that were not being handled effectively by the State, and that we would continue to work with ATF in investigating firearms traffickers through the use of undercover investigations. Deputy Attorney General Comey understood and agreed with this approach. The fact that in 2005 the city of

San Diego reached its lowest level of violent crime in 25 years demonstrates that our work with the District Attorney on gun prosecutions was both intelligent and effective.

- (a) With respect to immigration, Mr. Moschella said that your "numbers for a border district just didn't stack up...." He noted that "this Administration has made immigration reform a priority and those on the border...have a responsibility there to the rest of the country to vigorously enforce those laws."

Mr. Moschella's comments reflect an unfortunate emphasis on mere statistics to the exclusion of important considerations such as the quality of the prosecutions and the lengths of sentences achieved. More than 170,000 individuals are currently arrested along the California border with Mexico – the border that lies within the Southern District of California. Outside of the Southwest Border, no U.S. Attorney's Office similar in size to the Southern District of California prosecutes more than 1500 cases a year; SDCA prosecuted between 2700 and 3700 cases each year that I was U.S. Attorney. It was evident to me, however, that we needed to critically assess the lengths of sentences we were obtaining and the types of cases we were prosecuting rather than simply pursue statistics, as we were neglecting many important large smuggling investigations in order to meet the demands of handling numerous smaller reactive cases. This reassessment also mirrored the clear mandate we were given by the Department of Justice not to unduly reduce sentences simply for the purpose of obtaining guilty pleas. Therefore, after two years of study, we implemented new guidelines focused on investigations and prosecutions of alien smuggling organizations, corrupt border law enforcement agents, and immigration defendants with prior convictions for violent crimes.

The results were tangible in many respects. *In 2005, the violent crime rate in San Diego fell to its lowest point in 25 years.* Following labor-intensive wiretap investigations, *seven* Border Patrol agents and Customs and Border Protection inspectors were convicted of corruptly aiding alien smuggling organizations. The two owners of one of California's largest fence companies were convicted of felonies for knowingly employing illegal aliens, and the company paid \$5 million in forfeitures. In another case, the leader of an alien smuggling organization was sentenced to 188 months in custody. These huge cases, which yielded only a few "stats" but dismantled criminal organizations, would not have been possible if the attorneys who worked on them had instead been assigned dozens of small cases involving lower-level criminals.

7. With regard to your office's gun violence prosecutions, Mr. Moschella, at the hearing, referred to a conversation that former Deputy Attorney General Jim Comey had with you. Please provide your recollection of that conversation.

I recall two conversations with then-Deputy Attorney General Comey, both in 2004. One was in person, during a visit he made to the office. We discussed Project Safe

Neighborhoods, and I informed him of the facts I listed in my answer to 6(a) above. He listened carefully when I explained that if we were to pursue hundreds of gun cases that were already being handled well by the District Attorney, it would have to come at the expense of some border cases that the D.A. could not handle. He responded that he understood that I was "starting from a different baseline," indicating to me that he accepted my approach as a reasonable one.

A second conversation occurred a few months later, when Mr. Comey called me as part of his review of PSN. I believe a representative of ATF was also on the conference call. Mr. Comey stated that he was "not looking for gun cases for the sake of doing gun cases," but wanted to know if there were any issues that DOJ could do to help regarding our gun prosecutions. We had a constructive conversation about our office's work with ATF on undercover investigations and our implementation of a protocol to take referrals of cases where we could achieve a substantially higher sentence in federal court than state court.

8. Please describe how your office coordinated with the state and local district attorney offices with respect to prosecuting gun crimes.

The Southern District of California is unique among extra-large U.S. Attorneys Offices in that it is comprised of only 2 counties, and 95% of the population resides in one of those counties. As a result, there is good consistency and uniformity in the enforcement of gun laws, which are quite strict in California. As stated above, local law enforcement has been very satisfied with the San Diego District Attorney's handling of gun crimes, and the U.S. Attorney's Office has a protocol in place with that office whereby gun cases are referred to the U.S. Attorney's office if a substantially higher sentence could be achieved in federal court.

9. Please describe how your office coordinated with Project Safe Neighborhoods.

Our office has an attorney coordinator for PSN who chairs monthly meetings of the PSN Task Force. The PSN Task Force brings together representatives of local and state law enforcement, members of the community, and federal and state prosecutors to oversee PSN grant administration and discuss policies relating to reduction in gun crimes. Our office issued reports to the Department of Justice on the progress of PSN at regular intervals, and participated in the PSN training sessions and conferences sponsored by the Department of Justice.

10. With respect to prosecutions of people smuggling illegal aliens or drugs across the border, Mr. Moschella observed at the hearing that at about the 2004-05 time frame, the numbers in your district "dropped precipitously." This occurred, according to Mr. Moschella, because of a policy your office instituted to focus on "higher priority prosecutions." What is your response?

Mr. Moschella's reference to "higher priority prosecutions" is misleading because it implies that we reduced immigration prosecutions in favor of pursuing prosecutions

in some other area. To the contrary, we put our resources to work pursuing more serious immigration crimes, which may have yielded fewer statistics, but put behind bars more serious criminals for longer periods of time. Additionally, our alien smuggling statistics since 2005 have been rising steadily, as have our reactive border drug cases.

11. At the hearing, Mr. Moschella said that Senator Dianne Feinstein "wrote specifically" about her concern that the San Diego area not become a "magnet" for illegal border crossings. Has the San Diego area become a magnet for illegal border crossings?

The Southern District of California has not become any more a "magnet" for illegal border crossings than any other Southwest Border district. Ten years ago, it was estimated that 500,000 people crossed the border illegally from Mexico into California each year, while 100,000 people crossed the border illegally from Mexico into Arizona. Today, those proportions have reversed, with 600,000 crossing into Arizona every year, and 170,000 crossing into California.

Senator Feinstein has also stated publicly that she was satisfied by the written response she received from Mr. Moschella that immigration enforcement was being appropriately handled in the Southern District of California.

12. Mr. Moschella made the following statement at the hearing, "Well, I know that the border patrol and others in that area were very concerned about the numbers of apprehensions made and the number of prosecutions that were declined....When you lower the prosecutions, the deterrence level certainly will go down." What's your response?

What Mr. Moschella said is true in every area of law enforcement, which is why it is important that a U.S. Attorney's Office strike a balance among its various responsibilities and not focus simply on one area. Our experience has been that public corruption, for example, also flourishes if there are no prosecutions to deter it. In the area of immigration, we promised Border Patrol that we would revisit the guidelines after a few months to measure their effect. We followed through on that promise, and in consultation with Border Patrol made adjustments to address their concerns by agreeing to prosecute additional categories of smugglers.

13. Did your office prepare a memorandum in response to Representative Darrell Issa's concerns about the need for prosecution thresholds regarding illegal immigration prosecutions.

(a) Do you know if this memorandum was provided to Representative Issa?

(b) Could you please provide us with a copy of that memorandum for inclusion in the hearing record?

I did not prepare a specific memorandum in response to Representative Darrell Issa's concerns. However, in May of 2006 I sent an Urgent Report to the Department of Justice regarding criticisms leveled at my office by Representative Issa that were based on a report purported generated by a substation of the Border Patrol in my district. I stated in the Urgent Report that I had responded to the allegations by pointing out that Representative Issa had apparently been misled, because the so-called Border Patrol report was actually a false and altered version of an internal Border Patrol report. Additionally, I wrote a memorandum to Bill Mercer and Michael Elston dated July 10, 2006, regarding our approach to immigration and gun crimes in the Southern District of California. That memorandum is contained in the documents released by the House Judiciary Committee at ASG0000295. I do not believe that either document was provided to Representative Issa.

14. Please describe any awards, commendations, or other performance-related assessments that you received during your tenure as United States Attorney for the Southern District of California. Were you asked to serve on the Attorney General's Advisory Committee?

2003 – San Diego Press Club Top Headliner of the Year (Federal Law Enforcement)

2005 – Los Angeles Daily Journal "Top 100 Lawyers"

2007 – U.S. Health & Human Services Inspector General's Award

2007 – Los Angeles Daily Journal "Top 75 Women Litigators"

2007 – San Diego County Bar Association Outstanding Lawyer of the Year

15. Did you receive a letter from Customs and Border Protection regarding your office's illegal immigration enforcement efforts? If so, please provide a copy of that letter for inclusion in the hearing record.

Will provide.

16. Were you ever told by anyone in the Justice Department that your job performance was inadequate in any respect prior to your being asked to resign?

No.

17. At the hearing, Mr. Moschella cited two issues (pertaining to violent crime and illegal immigration prosecutions) that the Justice Department determined warranted your dismissal. Until the hearing, were you aware that the Justice Department had these "two basic issues" with your office thereby warranting your dismissal?

No.

18. Did you ever receive a warning from the Justice Department that your office's priorities would result in your being asked to resign?

No.

(a) Do you know if any of the federal investigative agencies with which you worked were consulted about your termination or the impact your termination would have on investigations pending in your jurisdiction?

I do not believe they were.

19. When you were notified by Executive Office for United States Attorneys Director Michael Battle that you were being asked to resign, did he give you any explanation why this was being done?

No.

20. After you were so notified by Mr. Battle, did you have any conversations with either DAG Paul McNulty or DAG Chief of Staff Michael Elston about the reasons why you were being asked to resign? If so, please describe your recollection of those conversations.

Following the call from Michael Battle informing me I was to resign effective January 31, 2007, I called DAG McNulty to inquire why I was being asked to resign. He responded that he wanted some time to think about how to answer that question because he didn't want to give me an answer "that would lead" me down the wrong route. He added that he knew I had personally taken on a long trial and he had great respect for me. Mr. McNulty never responded to my question.

After a follow-up call with Mike Battle a few days later, I requested additional time to ensure an orderly transition in the office, especially regarding pending investigations and several significant cases that were set to begin trial in the next few months. On January 5, 2007, I received a call from Michael Elston informing me that my request for more time based on case-related considerations was "not being received positively," and that I should "stop thinking in terms of the cases in the office." He insisted that I had to depart in a matter of weeks, not months, and that these instructions were "coming from the very highest levels of the government." In this and subsequent calls, Mike Elston told me that (1) he "suspected" and "had a feeling" that the interim U.S. Attorney who would succeed me would not be someone from within my office, but rather would be someone who was a DOJ employee not currently working in my office, (2) there would be "no overlap" between my departure and the start date of the interim U.S. Attorney, and (3) the person picked to serve as interim U.S. Attorney would not have to be vetted by the committee process used in California for the selection of U.S. Attorneys.

I submitted my resignation on January 16, 2007, effective February 15, 2007.

APR-23-01 04:33PM FROM: DONALD L. LEE
SECRET
(a) Were you given any instructions or directions regarding your public statements?
Were you given any instructions or directions regarding your statements to Congress about your termination?

When Mr. Battle called me on December 7, 2006, he advised me to simply say publicly that I had decided to pursue other opportunities. During one phone call, Michael Elston erroneously accused me of "leaking" my dismissal to the press, and criticized me for talking to other dismissed U.S. Attorneys.

21. Mr. Moschella stated at the hearing that the Justice Department expects U.S. Attorneys to adhere to the Department's priorities. He said that every U.S. Attorney will say that his or her office has "resource strains." With respect to your district, however, he said that it had "significant resources." What is your response to these statements?

While I no longer have access to official records at the U.S. Attorney's Office, my recollection is that during my tenure as United States Attorney, our resources decreased significantly. While the number of FTE's (Full Time Equivalents) for attorneys increased from 119 to 125 from 2002 to 2006, many of the positions could not be filled due to budget shortages (the number of FTEs that can be filled is entirely dependent on the office budget). DOJ has publicly said that our offices budgets have increased by 29% since 2000. However, this figure is misleading. Mandatory cost-of-living increases and pay raises quickly consumed any budget increases we might see on paper. In reality, our budgets shrank. Most attorneys and office staff across the nation received no or minimal discretionary pay raises for at least 2 years. The situation reached a peak in early 2006, when all U.S. Attorneys Offices were informed that their office staffs would have to decrease in size by at least 10%, with the extra-large offices (including the Southern District of California and the District of Arizona) assuming larger shares of the cuts.

22. How many positions did your office have for each year of your tenure?

When I took office in 2002, SDCA was allotted 119 FTEs for attorneys, but the common practice was to leave at least two positions unfilled for budget reasons. As explained above, we received 6 more authorized positions over the next 4 years, but not enough money to fill them.

23. What effect, if any, did the Administration's annual budget cuts have on your office?

For my entire tenure as U.S. Attorney, it was a constant struggle to keep fully staffed on the attorney side. Because of the dire budget situation, we were told to avoid hiring experienced attorneys because they were more expensive. This meant that we had to hire attorneys with minimal experience, which required us to expend more resources on supervision and training. Ultimately, we were forced to leave between 12-15 attorney positions vacant.

24. Did these budget cuts have a disproportionate effect on your office? If so, please explain why.

Large and extra-large U.S. Attorneys Offices were expected to shoulder a larger percentage of the budget cuts because larger offices have more attrition and more opportunities to save money by leaving positions unfilled. When Congress passed a bill for fiscal year 2006 imposing a 1% rescission on all federal government agencies, for example, extra-large offices such as SDCA and D.AZ were told that our actual budget reduction would be between 3 and 4 percent.

25. What effect did these budget cuts and lack of personnel have on the ability of your office to meet the Justice Department's myriad priorities?

Obviously, fewer attorneys and staff makes it more difficult to cover the wide spectrum of cases we thought we should prosecute.

26. Were there competing Justice Department priorities that conflicted with your office's ability to prosecute high-volume immigration cases?

During my tenure as U.S. Attorney, we were told to pursue many different priorities. Early in my tenure, my office in particular was told to bring more corporate fraud cases, more computer crime cases, more medical marijuana cases. We did that, and more. By the time I left the office, our office ranked #1 in the country for computer intrusion and hacking cases, and we have the leading office in the country in terms of large-scale narcotics investigations and prosecutions. At the same time, we devoted more attorney time to higher-level alien smuggling organizations as well as prosecutions of individuals with significant criminal histories. We made a real difference by attacking the crime problem at its source, not its symptoms.

27. Did your office request additional resources from the Attorney General? If yes, were your requests granted or denied? If denied, were you told why?

In February or March of 2006, the Southwest Border U.S. Attorneys requested additional resources from the Deputy Attorney General to enable us to keep pace with our immigration prosecution demands. Every U.S. Attorney's Office had just received the unwelcome news that office staffs would have to decrease by 10-15%. The Southwest Border U.S. Attorneys were alarmed that with this kind of decrease, it would be difficult – if not impossible – to further the President's agenda of strengthening immigration enforcement. Our request was denied. Finally, in August of 2006, we were informed that each Southwest border office would receive funding to hire 3-4 attorneys to prosecute immigration cases. However, that money simply funded four of the 12 positions my office had already had to leave vacant due to the budget decrease.

28. Did your office experience any hiring freezes during your tenure?

As described above, although there was no official hiring freeze imposed, there was a de facto hiring freeze for many U.S. Attorneys Offices that began in 2005. SDCA was able to hire new attorneys only after we had reduced our staff by approximately 12 attorneys.

29. How many AUSAs did your office have when you started and completed your tenure as USA?

While I do not have access to official records, my recollection is that our official attorney FTE was 119 when I started and was 125 when I left. However, the office actually had 111 attorneys on board when I started and 106 on board when I left, due primarily to budget restrictions.

30. Please describe the challenges of managing an office in a district where you have a limited number of attorneys, many illegal aliens, and many competing priorities.

When I left the office, there were approximately 106 attorneys on board. Our civil division, which represents the United States in civil lawsuits, was staffed with approximately 18 of those attorneys. Financial litigation attorneys, appellate attorneys, and non-litigating supervisors accounted for approximately another 15 attorneys. This left approximately 73 attorneys to handle the day-to-day criminal caseload in the Southern District of California.

In recent years, the Department of Justice has funded several positions in U.S. Attorneys' Offices with instructions on the condition that those positions be used to prosecute only certain types of cases. Thus 18 of our criminal attorneys are required to work on only large-scale narcotics cases under the Organized Crime Drug Enforcement Task Force program (OCDETF). Additionally, the office has 2 positions designated for Cybercrimes, 2 for health care fraud, 1 for corporate fraud, and 1 for juvenile gun crimes. This left approximately 50 attorneys available to handle the remaining criminal caseload, including immigration cases, smaller narcotics crimes, and fraud cases.

Ideally, every prosecutor's office should be able to prosecute every federal crime committed in the district. With 170,000 arrests of illegal aliens every year, and thousands of mail thefts, tax cheats, passport frauds, drug sales, and other crimes committed in the district, difficult decisions must be made. I chose to prosecute larger cases instead of smaller ones, believing – as I still do – that the true measure of success comes from the impact those prosecutions have on crime in the district, not from simply counting statistics. By that measure, we were very successful.

31. Did the Justice Department's recognition of your district's special challenges change over the course of your tenure as U.S. Attorney. If so, please explain.

Yes. For the first two years (2003 and 2004), there was recognition and appreciation by the Department of Justice of the special challenges faced by the Southwest

Border U.S. Attorneys Offices. Since that time, however, there has been increasing impatience and intolerance expressed at these districts, despite the fact that they carry the highest caseloads in the nation.

32. At the hearing, Darrell Issa concluded his opening statement with the following comments about you: "She was repeatedly asked by this committee and by our Senator to do better on the prosecutions of those who traffic in human beings. She didn't do so and my only question for this committee is not why was she let go, but why did she last that long?"

(a) What is your response?

Those are harsh words, and I'm sorry he feels that way. But I've prosecuted cases on the border for 17 years, and I firmly believe we did the right thing by spending our resources on prosecuting the most serious criminals. And, as evidenced by DOJ's response to Representative Issa's letter, the Department of Justice apparently agreed with me.

Responses to Questions for Carol Lam, Esq.

- 1. When you were a U.S. Attorney, did you understand that you served as U.S. Attorney at the will of the President?**

A: Yes, although I understood from history and tradition that, barring misconduct, I would be allowed to serve until the end of the President's administration.

- 2. Did you serve out the full, four-year term of your appointment as U.S. Attorney?**

A: I served a four-year term. However, I understood from history and tradition that, barring misconduct, I would be allowed to serve until the end of the President's administration.

- 3. Do you understand that the Department of Justice has to set enforcement priorities for the nation?**

A: I understand that sometimes centrally-coordinated "enforcement priorities" can be useful and efficient. As I stated in my interviews during the selection process for U.S. Attorneys, however, I think it is a responsibility of a U.S. Attorney to effect the Attorney General's guidelines in a way that makes sense in the district.

- 4. Do you understand that immigration and border enforcement are priorities of the President and Department of Justice headquarters?**

A: Yes. However, immigration did not receive a great deal of attention as a law enforcement priority at the Department of Justice until 2006.

- 5. To the extent not already done so at the hearing, please identify any letters from Congressmen, Senators or other officials expressing concern over your level of activity in this priority area?**

A: None.

- 6. Do you understand that gun enforcement is a priority of the President's and Department of Justice headquarters, including through Project Safe Neighborhoods?**

A: Yes. In the Southern District of California, gun crimes are well handled by the District Attorney, and many local law enforcement efforts to tackle illegal firearms are supported by our work through the PSN Task Force, which we chair.

- 7. Did you attend U.S. Attorney Conferences on Project Safe Neighborhoods and U.S. Attorney Conferences where the priority of gun prosecutions was discussed?**

A. I attended many U.S. Attorney conferences, and at some of them PSN was discussed.

8. Do you recall seeing at such a conference a video in which the President of the United States himself talked about the priority of gun prosecutions?

A: Although I have seen several video and live presentations by the President, I do not recall seeing this particular video. As I was one of the last U.S. Attorneys to take office, it is possible that this video was played prior to my entrance on duty.

9. Did former Deputy Attorney General James B. Comey ever talk to you about your low gun or immigration case numbers?

A: I recall two conversations with then-Deputy Attorney General Comey, both in 2004. One was in person, during a visit he made to the office. We discussed Project Safe Neighborhoods, and I informed him of the facts I listed in my answer to 6(a) above. He listened carefully when I explained that if we were to pursue hundreds of gun cases that were already being handled well by the District Attorney, it would have to come at the expense of some border cases that the D.A. could not handle. He responded that he understood that I was "starting from a different baseline," indicating to me that he accepted my approach as a reasonable one.

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